

III. DEFENDANTS

4. Great Lakes Carbon Corporation was a Delaware Corporation. In 2003, Great Lakes Carbon Corporation converted to a Delaware limited liability company and changed its name to Great Lakes Carbon LLC.

5. Defendant Great Lakes Carbon LLC retains all liabilities of Great Lakes Carbon Corporation with respect to the Site

6. Defendant Great Lakes Carbon LLC conducts business in the State of Texas.

7. Great Lakes Carbon Corporation sent to the Site petroleum coke which contained hazardous substances within the meaning of CERCLA Section 101(14), 42 U.S.C. § 9601(14).

8. Defendant Phelps Dodge Corporation is a New York corporation which has conducted business in the State of Texas.

9. Defendant Phelps Dodge Corporation sent to the Site, inter alia, sulfuric acid which is a hazardous substances within the meaning of CERCLA Section 101(14), 42 U.S.C. § 9601(14).

IV. FACTUAL BACKGROUND

A. Description of the Site

10. The Site centers on the former location of a tin and copper smelter located in Texas City, Galveston County, Texas at the corner of Farm to Market Road 519 and State Highway 146.

11. Metal smelting operations, principally for production of tin but also including other metal smelting and other production operations, occurred at the Site intermittently from approximately 1941 until 1991.

12. The Site included metal smelting facilities and areas where materials resulting from the smelting process were disposed of, including a number of ponds that previously contained acidic wastes and waste waters.

B. Response Actions at the Site

13. Pursuant to CERCLA Section 105, 42 U.S.C. § 9605, EPA proposed to list the Site on the National Priorities List (“NPL”) on June 24, 1988. 53 Fed. Reg. 23988. EPA published a final rule placing the Site on the NPL on August 30, 1990. 55 Fed. Reg. 35502.

14. On May 11, 1993 the United States Court of Appeals for the District of Columbia Circuit ordered the Site deleted from the NPL. Tex Tin Corporation v. U.S. Environmental Protection Agency, 992 F.2d 353 (D.C. Cir. 1993).

15. Pursuant to CERCLA Section 105, 42 U.S.C. § 9605, EPA proposed to re-list the Site on the NPL on June 17, 1996. 61 Fed. Reg. 30575. EPA published a final rule re-listing the Site on the NPL on September 18, 1998. 63 Fed. Reg. 49855.

16. For purposes of investigation and response, EPA divided the Site into operable unit (“OUs”) numbered 1 through 4.

1. Operable Unit 1

17. Operable Unit 1 (“OU-1”) included the main processing area; three major processing buildings and associated structures; storage and disposal areas; waste water treatment ponds; and an acid pond.

18. Pursuant to an administrative order issued by EPA on March 30, 1990, a Remedial Investigation was conducted to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened

release of hazardous substances, pollutants or contaminants at or from the Site. The Remedial Investigation ("RI") Report was approved by EPA and issued in June 1993.

19. EPA selected a remedy for OU-1 in May 1999 and amended the selected remedy on March 7, 2000.

20. In May 2000, the United States and the State of Texas filed a complaint pursuant to CERCLA Sections 106 and 107, 42 U.S.C. § 9606 and 9607, for injunctive relief and recovery of response costs incurred and to be incurred in connection with the Site against twenty five parties ("the Tex Tin Settling Defendants"). United States and State of Texas v. Alpha metals, Inc. et al., Civil Action No. G-00-250 (S.D. Tex.). Contemporaneously with the filing of that complaint, the United States and the State of Texas lodged a Consent Decree settling claims against the defendants named in the complaint and settling claims against certain settling federal agencies ("the RD/RA Consent Decree"). In the RD/RA Consent Decree, the Tex Tin Settling Defendants agreed to perform the cleanup work at the Site. With modifications specified in the August 3, 2000 Motion to Enter, the Court entered the RD/RA Consent Decree on August 4, 2000. The Court entered an order approving modifications to the RD/RA Consent Decree on March 7, 2003.

21. Under the RD/RA Consent Decree, the Tex Tin Settling Defendants with partial funding from the settling federal agencies, performed the cleanup work at OU-1.

22. Cleanup of OU-1 is now complete and a Certificate of Completion was issued on September 23, 2005.

23. Operation and maintenance activities necessary to maintain the effectiveness of the remedial action at OU-1--including long-term groundwater monitoring, maintenance of the

on-site landfill cells, and monitoring and maintenance of the soil cover/cap on portions of the property--are ongoing and will be required into the future.

2. Operable Unit 2

24. Operable Unit 2 ("OU-2") is a 27.33-acre property formerly owned by Amoco Chemical Co. (now known as BP Amoco Chemical Company and hereinafter referred to as "BP ACC") which was once part of the smelting operation at the Site.

25. BP ACC completed an early response action on its property under the Texas Voluntary Cleanup Program ("VCP") administered by the Texas Natural Resource Conservation Commission ("TNRCC").

26. BP ACC submitted the Final Closure Report in June 1998 and TNRCC signed the VCP Conditional Certificate of Completion on August 27, 1999.

27. Finding that the BP ACC VCP response action met the remedial action goals and was consistent with the remedy selected for OU-1, EPA decided that no further action was required at OU-2 on September 27, 2001.

28. OU-2 was deleted from the National Priorities List ("NPL") effective October 15, 2002.

29. Long-term operation and maintenance activities on OU-2 are ongoing and will be required into the future.

3. Operable Unit 3

30. Operable Unit 3 ("OU-3"), a residential area in the town of LaMarque downwind from the Site, was the subject of a time-critical removal action conducted by EPA beginning in

March of 1999. EPA completed the physical removal of contaminated soil in excess of 20 parts per million arsenic in June of 1999.

31. After reviewing the results of the removal action, EPA determined that no further cleanup was required at OU-3 on September 29, 2000.

32. OU-3 remains on the NPL at this time.

33. No long term operation and maintenance activities are required on OU-3.

4. Operable Unit 4

34. Operable Unit 4 ("OU-4") consists of the Swan Lake Marsh area, a wetland contaminated by hazardous substances from the Site located between the former smelting operation and Galveston Bay.

35. Remedial Action for OU-4, construction of a segmented breakwater on the footprint of the shell islands located in Swan Lake, was completed in 2004. The purpose of the breakwater was to prevent movement of contaminated sediments from the marsh area.

36. No long term operation and maintenance activities are required on OU-4.

C. General Allegations

37. Prior to the response actions, numerous heavy metals were present at the Site, including, but not limited to, arsenic, cadmium, chromium, copper, lead, mercury, nickel and zinc.

38. Arsenic, cadmium, chromium, copper, lead, mercury, nickel and zinc are hazardous substances listed at 40 C.F.R. § 302.4.

39. The United States has incurred costs in the amount of approximately \$11.375 million in responding to releases or threatened releases of hazardous substances from the Site.

The United States continues to incur additional response costs.

V. LAW GOVERNING CLAIMS FOR RELIEF

40. CERCLA Section 107(a), 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subSection (b) of this section-

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any, hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for -

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan

41. CERCLA Section 113 (g)(2)(B), 42 U.S.C. § 9613 (g)(2), provides, in pertinent part:

In any such action described in this subSection [an action for recovery of costs under CERCLA Section 107], the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

FIRST CLAIM FOR RELIEF

42. The allegations in paragraphs 1 through 41 of the Complaint are realleged and incorporated herein by reference.

43. Each of the Defendants is a “person” within the meaning of CERCLA Sections 101(21) and 107, 42 U.S.C. §§ 9601(21) and 9607.

44. The Site is a “facility” as defined in CERCLA Section 101(9), 42 U.S.C. § 9601(9), and as used in CERCLA Section 107, 42 U.S.C. § 9607.

45. Each of the Defendants by contract, agreement, or otherwise arranged for the disposal of hazardous substances which were disposed of at the Site within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3).

46. There have been releases and substantial threats of releases of hazardous substances from the Site, within the meaning of CERCLA Sections 101(22), 104, and 107(a), 42 U.S.C. §§ 9601(22), 9604, and 9607(a).

47. As a result of the releases or threatened releases of hazardous substances from the Site, the United States has incurred and will continue to incur response costs, including the costs of removal or remedial action as defined in CERCLA Section 101(23), (24), and (25), 42 U.S.C. § 9601(23), (24), and (25), and as used in CERCLA Section 107(a), 42 U.S.C. § 9607(a).

48. The response actions taken by the United States were necessary to protect the public health or welfare or the environment, and were not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300.

49. The United States has satisfied any and all conditions precedent to the response actions taken and to recovery of its costs under CERCLA Section 107, 42 U.S.C. § 9607.

50. Each of the Defendants is jointly and severally liable to the United States for all costs of response incurred and to be incurred by the United States relating to the Site pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

51. The United States is also entitled to a declaratory judgment on Defendant's liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages in connection with the Site.

PRAYER FOR RELIEF

WHEREFORE, the United States requests that this Court enter Judgment in favor of the United States and against each of the Defendants, jointly and severally:


A. Awarding the United States reimbursement of all costs incurred and paid by it in responding to releases or threatened releases of hazardous substances at the Site, plus the costs of investigation and cost recovery related to such releases and this suit, plus prejudgment interest;

B. Awarding the United States their enforcement costs, including attorneys' fees, costs and disbursements in this action;


C. Enter a declaratory judgment on Defendant's liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages; and

D. Awarding the United States such other and further relief as the Court may deem just and proper.

Respectfully submitted,


RONALD J. TENPAS
Acting Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

Attorney in Charge:


MICHAEL T. DONNELLAN
Maine Bar 7531
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Phone: (202) 514-4226
Fax: (202) 514-0097
Email: michael.donnellan@usdoj.gov

DONALD J. DeGABRIELLE, JR.
United States Attorney
Southern District of Texas

Local Co-Counsel:

DANIEL DAVID HU
Assistant United States Attorney
Southern District of Texas
P.O. Box 61129
Houston, Texas 77208
Phone: 713-567-9000
Texas Bar No. 10131415
S.D. Texas I.D. 7959

OF COUNSEL:

PAMELA TRAVIS
JAMES BOVE
Assistant Regional Counsel
EPA Region VI
1445 Ross Avenue
Dallas, Texas 75202